

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re: ) Chapter 7  
 )  
WESTLAKE PROPERTY HOLDINGS, LLC, *et al.* ) Case No. 19-22878  
 ) (Jointly Administered)  
Debtors. )  
 ) Hon. Deborah L. Thorne  
 )  
\_\_\_\_\_ )

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that on **November 5, 2019 at 9:30 a.m.**, the undersigned shall appear before the Honorable Deborah L. Thorne in Courtroom 613, or whomever may be sitting in her stead, at the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, 219 South Dearborn Street, Chicago, Illinois and will present the **AGREED MOTION FOR RELIEF FROM THE AUTOMATIC STAY**, a copy of which was previously served upon you.

Dated: October 29, 2019

Respectfully submitted,

**VILLAGE OF MELROSE PARK**

By: /s/ Kevin H. Morse

One of Its Attorneys

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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that he caused a true and correct copy of the foregoing **Notice of Agreed Motion** to be filed with the Court and served upon the following on October 29, 2019 by the manner listed below.

/s/ Kevin H. Morse

**SERVICE LIST**

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**IN THE UNITED STATES BANKRUPTCY COURT  
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In re:	)	Chapter 7
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WESTLAKE PROPERTY HOLDINGS, LLC, <i>et al.</i>	)	Case No. 19-22878
	)	(Jointly Administered)
Debtors.	)	
	)	Hon. Deborah L. Thorne
	)	

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**AGREED MOTION FOR RELIEF FROM THE AUTOMATIC STAY**

The Village of Melrose Park (the “Village”), by and through its undersigned counsel, pursuant to 11 U.S.C. § 362(d)(1), files this Agreed Motion for Relief from the Automatic Stay (the “Motion”) as agreed to by Ira Bodenstein, not individually, but solely as Chapter 7 Trustee for Westlake Property Holdings, LLC and Pipeline-Westlake Hospital, LLC (the “Trustee”). In support thereof, the Village states as follows:

**I. Background Facts**

1. On August 6, 2019 (the “Petition Date”), Westlake Property Holdings, LLC and Pipeline-Westlake Hospital, LLC (collectively, the “Debtors”) filed voluntary bankruptcy petitions under chapter 7 of title 11 of the U.S. Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Delaware Court”), designated as Case Nos. 19-11756 and 19-11757 (collectively, the “Bankruptcy Cases”), respectively.

2. On August 13, 2019, the Delaware Court entered an *Order Granting Motion of the United States Trustee to Transfer Venue to the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division* (the “Transfer Orders”) in each of the Bankruptcy Cases. Pursuant to the Transfer Orders, the Delaware Court transferred the Bankruptcy Cases to this Court, and the Trustee was appointed. The Trustee is the duly appointed and acting chapter

7 trustee for the Debtors, and is in exclusive possession and control of all of the assets and corporate decisions of the Debtors.

3. Prior to the Petition Date, debtor Pipeline-Westlake Hospital, LLC (the “Hospital Debtor”) operated Westlake Hospital located at 1225 W Lake St, Melrose Park, Illinois 60160 (the “Hospital”).

4. On February 21, 2019, the Hospital Debtor filed a Discontinuation Certificate of Exemption Application (the “Discontinuation Application”), which sought approval from the Illinois Health Facilities and Services Review Board (the “Board”) to terminate all services at the Hospital. The Discontinuation Application was set to be heard by the Board on April 30, 2019.

5. On March 7, 2019, prior to the hearing before the Board, the Village filed a complaint in the Circuit Court of Cook County, Illinois (the “State Court”) against the Hospital Debtor and non-debtor affiliates Pipeline Health System LLC (“Pipeline Parent”), SRC, TWG Partners LLC (“TWG”), Nicolas Orzano (“Orzano”), and Eric Whitaker (“Whitaker”), captioned *Village of Melrose Park v. Pipeline Health Systems, LLC, et al.*, 2019 CH 03041 (the “Underlying Action”). Pipeline Parent, SRC, TWG, Orzano and Whitaker are collectively, “Non-Debtor Defendants”. The Underlying Action, *inter alia*, sought damages against the Hospital Debtor and Non-Debtor Defendants for fraudulent misrepresentation, civil conspiracy, and violation of several municipal codes.

6. On April 30, 2019, the Board approved the Discontinuation Application and closure of the Hospital.

7. On May 2, 2019, the Village filed a separate complaint in the State Court against the Board, the Hospital Debtor, and SRC, seeking judicial review of the Board’s decision to

authorize closure of the Hospital, captioned *Village of Melrose Park v. Pipeline Health Systems, LLC, et al.*, 2019 CH 05553 (the “Review Action”).

8. On May 7, 2019, following a hearing in the Review Action, the State Court entered an Opinion & Order (the “Order”) providing, *inter alia*, that “Defendant Pipeline-Westlake Hospital, LLC, Defendant SRC Hospital Investments II, LLC, and any of their employees or agents are enjoined from taking any action pursuant to the February 1, 2019 Discontinuation Application, including but not limited to closing Westlake Hospital.”

9. On August 8, 2019, the Village, joined by the Cook County State’s Attorney, filed in the Review Action, the *Plaintiff’s Emergency Petition for Rule to Show Cause* why SRC should not be held in contempt, impose daily fines of at least \$200,000 for violation of the Order, and hold SRC in contempt of court based on SRC’s authorizing the Debtors’ bankruptcy filings and failure to ensure that the Hospital remained open and operational (the “Contempt Proceedings”). The Debtors were not a party to the Contempt Proceedings.

10. On August 9, 2019, in response to the Contempt Proceedings, SRC filed on an emergency basis a *Motion to Stay Proceedings Pending Outcome of Debtors’ Bankruptcy Proceedings*.

11. On September 24, 2019, the Court entered a *Memorandum Opinion* that held, *inter alia*, that “[t]he automatic stay does not apply to SRC, but . . . any contempt citation based on the filing [of the bankruptcy petitions] would be barred under the Supremacy Clause and the federally enacted Bankruptcy Code.” [Docket No. 72]. The *Memorandum Opinion* also further stated that “the Review Action cannot move forward against Westlake unless the automatic stay is modified after notice and a hearing.” Id.

### **III. Relief Requested**

12. The Village, with the agreement of the Trustee, respectfully requests the Court enter an order modifying the automatic stay, pursuant to the terms set forth in the proposed order, to permit the Village to continue to prosecute, *inter alia*, the Review Action and Contempt Proceedings.

### **IV. Basis for Relief**

13. The Court should grant relief from the automatic stay because “cause” exists pursuant to 11 U.S.C. § 362(d)(1) based on the scope of the relief requested and Trustee’s agreement to such relief.

14. Section 362(a)(1) of the Bankruptcy Code bars “the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title . . .” 11 U.S.C. § 362(a)(1).

15. Though § 362(a) of the Bankruptcy Code provides for a nearly comprehensive stay of proceedings against a debtor, § 362(d) of the Bankruptcy Code requires a bankruptcy judge “to grant relief from the stay . . . for cause.” 11 U.S.C. § 362(d)(1). “Cause,” as used in § 362(d), “has no clear definition and is determined on a case-by-case basis.” *In re Fernstrom Storage and Van Co.*, 938 F.2d 731, 735 (7th Cir. 1991) (citing *In re Tucson Estates*, 912 F.2d 1162, 1166 (9th Cir.1990)). The Seventh Circuit has found “cause” to grant relief from the automatic stay to permit state court litigation to proceed when the state court “determination will neither deplete the debtor’s assets or otherwise interfere with the administration of the bankruptcy proceeding, nor hinder the debtor’s fresh start at the close of the proceeding. Rather,

it will operate only as a ‘prerequisite to recovery against another entity.’” *In re Shondel*, 950 F.2d 1301, 1307 (7th Cir. 1991) (quoting *Fernstrom*, 938 F.2d at 734).

16. The existence of “cause” for relief is even more apparent when the debtor is a corporate Chapter 7 debtor. “Corporate Chapter 7 cases, unlike almost any other type of bankruptcy case, have very limited purposes. They do not implicate the fresh-start considerations underlying nearly every other type of bankruptcy case, including individual Chapter 7 cases, and they do not demand the reorganizational analysis that a Chapter 11 or 13 case would demand.” *In re Am. Telecom Corp.*, 304 B.R. 867, 869 (Bankr. N.D. Ill. 2004) (citing *In re Ripley & Hill, P.A.*, 176 B.R. 596, 598 (Bankr.M.D.Fla.1994)); *see also In re Int’l Zinc Coatings & Chem. Corp.*, 355 B.R. 76, 85 (Bankr. N.D. Ill. 2006).

17. In this case, “cause” exists to grant relief from the automatic stay because the Trustee has agreed to permit the Village to name the Hospital Debtor as a defendant in the Review Action, on the limited basis set forth below, to ensure all state court proceedings may proceed. SRC has asserted in multiple briefs, before this Court and the state court, that the Debtor is a necessary party to the Review Action. The Trustee has agreed to permit the Review Action and other state court proceedings to continue on the following terms (the “Stay Relief Terms”):

A. The Village may continue to prosecute the Underlying Action solely against the Non-Debtor Defendants for the purpose of seeking judgment on the various causes of action related to, *inter alia*, the September 6, 2018 Change of Ownership Application and Discontinuation Application; provided, however, in prosecuting the Fourth and Fifth Causes of Action pled in the Underlying Action, the Village will not and may not seek any relief, remedy or order



compelling the reopening or operation of the Hospital. The Underlying Action shall remain stayed against the Debtor Hospital;

B. The Village may continue to prosecute the Review Action for the purpose of obtaining a judgment on the issue of whether the Board's decision to authorize closure of the Hospital was appropriate under relevant law and regulation; provided, however, in prosecuting the Review Action, the Village will not and may not seek any relief, remedy or order compelling the reopening or operation of the Hospital. The Review Action may continue against the Debtor Hospital solely for the purpose of having the Debtor Hospital as a nominal party to the Review Action and not for purposes of granting any relief whatsoever as to the Debtor Hospital or its property; and

C. No finding of fact in the Underlying Action, Review Action, or Contempt Proceedings shall constitute a binding factual statement or finding against the Trustee or in any way prejudice the Trustee or the bankruptcy estates.

18. The Court should enter an order modifying the automatic stay pursuant to the Stay Relief Terms set forth above because any determination of the state court "will neither deplete the debtor's assets or otherwise interfere with the administration of the bankruptcy proceeding, nor hinder the debtor's fresh start at the close of the proceeding. Rather, it will operate only as a 'prerequisite to recovery against another entity.'" *Shondel*, 950 F.2d at 1307 (quoting *Fernstrom*, 938 F.2d at 734). The Court has already held that the automatic stay does not apply to SRC. The relief requested herein, with the approval of the Trustee, will permit all state court proceedings to continue, including the Review Action, without prejudice to the Village or bankruptcy estates.

WHEREFORE, the Village of Melrose Park respectfully requests that this Court enter an Order: (i) modifying the automatic stay pursuant to the Stay Relief Terms; (ii) waiving the stay pursuant to Fed. R. Bankr. P. 4001(a)(3); and (iii) and for such other and further relief as necessary.

Dated: October 29, 2019

Respectfully submitted,

**VILLAGE OF MELROSE PARK**

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